

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 09-11231-RWZ

FRANK A. HOOKS

v.

STEVEN J. O'BRIEN

ORDER ON MOTION FOR CERTIFICATE OF APPEALABILITY
November 30, 2009

ZOBEL, D.J.

P March 1991 petitioner was sentenced to concurrent terms of imprisonment for fifteen years at MCI Concord for arson and five years for intimidation of a witness. As to both, he was to serve nine months with the remainder suspended and probation for two years. Accordingly, he was released on probation on September 20, 1991. On September 27 of that year he was arrested for murder on which charge he was convicted of manslaughter and sentenced to imprisonment for 15 to 20 years at MCI Cedar Junction. As a result of that conviction, the trial judge determined that petitioner had violated the terms of probation imposed as part of the arson and intimidation sentences. He thereupon revoked the suspension of the arson and intimidation sentences and ordered the remainder of those sentences to be served concurrently with each other, but consecutively to the manslaughter sentence. Petitioner claims that his constitutional rights were violated by the Commonwealth's improper calculation of the statutory good time attributable to the resurrected arson and intimidation sentences.

I dismissed the petition because, although couched in constitutional terms, it raised only questions of state law which are not cognizable under the federal habeas corpus statute. Because I do not believe this to be a debatable issue, the motion for a certificate of appealability is denied.

November 30, 2009

DATE

/s/Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE